



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA
CRIMINAL APPEAL NO. 37 OF 2015

NICHOLAS OJWANG OWINO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal arising from the Sentence of Chief Magistrate's Court delivered by Hon. Nanzushi, Senior Resident Magistrate on 17th August 2015 in Busia CM's Traffic Case No. 855 of 2015)

JUDGMENT

1. This Appeal, on Sentence, is bound to succeed. Nicholas Ojwang Owino (The Appellant) is serving a sentence of 3 years imprisonment after defaulting in the payment of a fine of Kshs. 200,000/-. This Sentence was imposed on him after he pleaded guilty to the charge of Causing Death by Dangerous driving Contrary to Section 46 of the Traffic Act (Cap 403 Laws of Kenya).
2. It is alleged that on the 3rd day of August 2015 at about 7.30 p.m. along Nabengele-Port Victoria Road at Sifugwe area in Busia County, being a driver of a motor vehicle registration No. KAL 238T make Nissan Matatu drove the said motor vehicle on the said road at a speed and manner which was dangerous to the public, and caused the death of a male pedestrian namely ANTHONY PATRICK WAFULA.
3. At the Appeal on sentence, which, is conceded to by the State, the Appellant pleads for leniency as he is sickly. Indeed the Court observed that the Appellant appeared sick and was weak. But there is another why this Court should interfere with the sentence.
4. The Appellant upon pleading guilty, accepted the following facts as read out by the Prosecution:-

“On 3.8.2015 at 7.30 p.m. the Deceased was crossing the road at Sifugwe area in Port Victoria. He was coming from left to right when a vehicle Registration No. KAL 238 T had(sic) was coming from Nabengela – Port Victoria which was being driven (sic) and knocked the Deceased. He fell at right of the road. The vehicle overturned and rolled severally. The 14 passengers got injuries. They were rescued by well wishes (sic). They were taken to Port Victoria Hospital. The Deceased was pronounced dead on arrival. The police were informed. I have a Post Mortem form from Port Victoria Hospital.

P Exhibit 1 – Post Mortem form.

The police drew sketch plan

P Exh 2 – rough sketch plan

P exh 3 – Fair sketch plan

Then the motor vehicle was later taken to police he was charged.

5. A person who is found guilty of causing Death by Dangerous driving is liable to imprisonment for a term not exceeding ten years. Yet it is a General principle of sentencing that imprisonment will not be imposed on a first offender except where the offence is particularly grave or aggravated or where the offence is widespread within the area of the Court. The Court record shows that the Appellant was a first offender. The facts as read out did not reveal any aggravating circumstances (e.g. that the Appellant drove in a reckless manner) or that the offence was rampant.

6. The Appellant has been incarcerated since 12th August 2015 when he was wrongfully imprisoned. Since he did not deserve a jail term, at all, I would think that the imprisonment he has served is more than sufficient punishment. For this reason I do hereby set aside the sentence imposed by the Trial Court and reduce it to the period already served.

7. The Appellant shall be set free unless held for some other lawful cause.

Dated, signed and delivered at Busia this 16th day of December 2015.

F. TUIYOTT

J U D G E

In the presence of:-

Oile – C/Assistant

.....for Appellant

.....for Respondent.